not liable to contribute in general average; by Portuguese law such a draft must contribute. The owner of the vessel paid the loan. *Held*, that the amount received in payment of the draft is chargeable with a proportionate liability in the computation of general average contribution. *Monsen* v. *Amsinck*, 166 Fed. 817.

General average contribution does not arise from any implied contract, but has become a part of maritime law, adopted from the old Rhodian laws. See *Burton* v. *English*, 12 Q. B. D. 218. The principal case follows the general rule that the law of the port of destination governs the adjustment and payment of general average. *Loring* v. *Neptune Ins. Co*, 20 Pick. (Mass.) 411. If, however, the voyage is completely broken up and the ship and cargo finally part company before reaching the port of destination, the law of the place where the interests are separated governs. *Fletcher* v. *Alexander*, L. R. 3 C. P. 375. But if the cargo is forwarded by the original master to the port of destination, then its laws govern. *Nat. Board* v. *Melchers*, 45 Fed. 643. Although it cannot be said that any particular court creates the right to general average contribution, it is only proper, when goods have come within the jurisdiction of a certain court and are subject to general average, that the schedule of distribution as laid down by that court should be recognized everywhere.

HIGHWAYS — REGULATION AND USE — UNDERGROUND LICENSES. — The plaintiff, a public service corporation, was licensed to run pipe lines of complicated structure under the highway. The defendant secured a permit to build a vault under the adjacent sidewalk up to the curb. In the course of this later construction the soil below the plaintiff's pipe line settled, resulting in injury to the pipes. The defendant was free from negligence. *Held*, that the defendant is liable. *New York Steam Co.* v. *Foundation Co.*, 40 N. Y. L. J. 2723 (N. Y., Ct. App., March 16, 1909).

The natural right of lateral support is incident to an estate in land. *Schultz* v. *Bower*, 57 Minn. 493. It seems never to have been extended in favor of mere rights in land. Its application to situations like that in the case under consideration would unjustly throw additional burdens on the proposed servient tenement. *Cf. Gayford* v. *Nicholls*, 9 Exch. 702. And in applying the maxim that no man may so use his own as to injure the property of another the court affords no *ratio decidendi;* for the very question in issue is whether there has been a legal injury. See *Bonomi* v. *Backhouse*, 27 L. J. Q. B. 378, 388. Many uses of land resulting in damage to neighbors are *damna absque injuria. Booth* v. *Ry. Co.*, 140 N. Y. 267. In these cases liability depends upon the reasonableness of the exercise of the right of property. *Steel Co.* v. *Kenyon*, 11 Ch. D. 782. The present case seems to be one of first impression. Since the defendant was exercising a mere license, the policy against restraining the natural use of property has no application; and in casting a liability on one who for private rather than for public purposes undertakes work on land not his own resulting in damage to the property of another, the court perhaps reaches a desirable result.

INJUNCTIONS — ACTS RESTRAINED — COLLECTION OF UNCONSTITUTIONAL TAX. — The plaintiff company was engaged in supplying the defendant city with water. The city by an ordinance levied a license tax upon the company, which then sought an injunction from a federal court to restrain its collection as an impairment of the obligation of the original franchise granted by the city. The defendant city demurred. *Held*, that the plaintiff is not entitled to an injunction, since it has an adequate remedy at law. *Boise, etc., Water Co.* v. *Boise City*, U. S. Sup. Ct., April 5, 1909.

Injunctions against the exercise of the taxing power of the state or federal sovereignty seem clearly unjustifiable where the remedy at law is adequate. In almost all the states, accordingly, the courts will not enjoin the collection of taxes imposed by the legislature on the sole ground of their unconstitutionality. *Mechanics', etc., Bank* v. *Debolt*, 1 Oh. St. 591. By statute the federal courts are precluded from restraining the assessment or collection of federal taxes on

any grounds. U. S. REV. STAT., 1878, § 3224. Nor will unconstitutional state taxation be enjoined, unless special facts show the insufficiency of the relief at law. *Shelton* v. *Platt*, 139 U. S. 591. Municipal corporations are not sovereign, and many courts have granted injunctive relief against unconstitutional taxation by them, despite the apparent adequacy of the remedies at law. *Lee* v. *Mellette*, 15 S. D. 586. In declining to distinguish municipal from state taxation under the federal procedure, the court in the principal case is supported by authority. *Dows* v. *Chicago*, 11 Wall. (U. S.) 108. Indeed, as the Judiciary Act in general terms denies equitable jurisdiction to the federal courts "where a plain, adequate, and complete remedy may be had at law," the result seems inevitable. U. S. REV. STAT., 1878, § 723.

INJUNCTIONS — ACTS RESTRAINED — RIGHT OF COURT TO REFUSE INJUNCTION AGAINST PRIVATE NUISANCE. — The plaintiff, a farmer, because of injury to his crops from the fumes of the defendant's smelter, brought a bill for a permanent injunction against the nuisance. The plaintiff's farm had not been rendered unprofitable; while the defendant's smelter had been built at a cost of $10,000,000, and was one of the chief industries of the state. *Held*, that an injunction will not be granted. *Bliss* v. *Anaconda Copper Mining Co.*, 167 Fed. 342 (Circ. Ct., D. Mont.). See NOTES, p. 596.

INSURANCE — CONSTRUCTION AND OPERATION OF CONDITIONS — CONDITION AGAINST SALE. — A mortgagor insured his interest for the benefit of the mortgagee. The policy contained a condition against sale. On default by the mortgagor, the mortgagee under a power of sale transferred to himself the absolute title. *Held*, that this transfer avoids the policy. *Boston Coöperative Bank* v. *American Cent. Ins. Co.*, 87 N. E. 594 (Mass.). See NOTES, p. 602.

INSURANCE — RESCISSION OF CONTRACT FOR FRAUD. — The plaintiff was induced to continue a policy of life insurance by the fraudulent representations of the insurer's agent. *Held*, that on discovering the fraud the plaintiff can rescind, and recover the full amount of the premiums paid. *Refuge Assurance Co.* v. *Kettlewell*, 126 L. T. 427 (Eng., H. L., March 5, 1909).

This decision affirms that of the Court of Appeal commented on in 22 HARV. L. REV. 134.

JUDGMENTS — EQUITABLE RELIEF — PERJURY A GROUND FOR INJUNCTION. — The plaintiff's testator had made a contract with the defendant, which later was cancelled. Concealing the cancellation, the defendant had secured a judgment against the plaintiff by means of false testimony. The plaintiff who was free from negligence in the court of law prayed for an injunction against the enforcement of the judgment. *Held*, that the plaintiff is entitled to an injunction on establishing the perjury. *Boring* v. *Ott*, 119 N. W. 865 (Wis.). See NOTES, p. 600.

MUNICIPAL CORPORATIONS — MUNICIPAL PROPERTY — DELEGATION OF POWER TO LEASE PROPERTY. — The charter of the plaintiff city gave the city council power to let or sell city property. An ordinance was passed authorizing a committee to lease certain property upon such terms and conditions as the committee deemed expedient. On February 20 the committee executed a lease to the defendant to take effect June 1. Between these dates a new city government came into office. Suit was brought to test the validity of the lease. *Held*, that the lease is valid. *City of Biddeford* v. *Yates*, 72 Atl. 335 (Me.).

Powers granted to a city council by statute or charter cannot be delegated to any of its officers or committees without express legislative authority, unless the duty involved is purely ministerial. *Lyon* v. *Jerome*, 26 Wend. (N. Y.) 485; *People* v. *Clean Street Co.*, 225 Ill. 470. A duty is ministerial when the mode of its performance is defined with such certainty that nothing remains for judgment or discretion. *Grider* v. *Tally*, 77 Ala. 422; *State of Mississippi* v. *Johnson*, 4 Wall. (U. S.) 475. Some courts have not adhered strictly to this definition in deciding a question of delegation of duties. *Hitchcock* v. *Galveston*, 96 U. S.